

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

Timothy Connelly, et al.

**On Behalf of Themselves and
All Others Sharing a Question of
Common Interest**

Plaintiffs

v.

Case No. 15-CV-308

**Dan Lepke Trucking LLC
Lepke Trucking & Excavating LLC**

Defendants.

MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by their attorneys, hereby move the Court to make the following findings in finding that they are entitled to summary judgment as to liability:

a. Connelly, the Schlichts, and Erlandson were not covered by the motor carrier exemption during at least a portion of their periods of employment with the Defendants, so that during said non-exempt time periods the Defendants violated the FLSA by (i) failing to pay them overtime pay for all hours worked over 40 per week; and (ii) Failing to count all of their work activities, which were performed before their trucks were loaded for the first time, and after their trucks were unloaded for the final time when computing their eligibility for overtime pay;

b. With respect to these non-exempt time periods the Defendants similarly violated DWD §274.03 in the manner that it computed the Plaintiffs' overtime pay;

c. Under Wisconsin law the Plaintiffs are entitled to additional straight time pay, at their regular rates, for their hours worked before their trucks were loaded for the first time, and after their trucks were unloaded for the final time on the day;

d. The Defendants violated Wisconsin law by failing to pay weekly prevailing wage overtime pay to the Plaintiffs whenever they worked more than 40 hours during a workweek;

e. Even during time periods when the Plaintiffs were covered by the motor carrier exemption, the Defendants were required to, but failed to pay them overtime pay for all hours worked after 40 per week, counting their prevailing wage, non-prevailing wage, pre-load, and post-unload hours worked towards the 40 hours worked per week;

f. The Defendants' deduction of \$4,138 from the paychecks of Timothy Connelly violated Wis. Stat. §103.455.

This motion is supported by the attached memorandum of law, the portions of the record cited therein, the declarations of Yingtao Ho and Timothy Connelly, and exhibits attached thereto.

Dated this 22nd day of March, 2018.

s/Yingtao Ho
YINGTAO HO
Wisconsin State Bar No. 1045418
The Previant Law Firm, s.c.
310 W. Wisconsin Avenue, Suite 100MW
Milwaukee, WI 53203
Phone 414/271-4500
Fax 414/271-6308
yh@previant.com

Attorneys for Plaintiffs